

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD MIELEWSKI, Personal Representative
of the Estate of BONNIE LEE MIELEWSKI,
Deceased,

UNPUBLISHED
January 11, 2005

Plaintiff-Appellant,

v

SOMMERS SCHWARTZ SILVER &
SCHWARTZ, P.C.,

No. 250354
Oakland Circuit Court
LC No. 2002-045767-NM

Defendant-Appellee.

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition in this legal malpractice action. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleged that defendant law firm mishandled the medical malpractice claim that arose when American Laboratory Corporation (“LabCorp”) failed to recognize cancerous cells in his wife’s November 1994 pap smear, causing her cancer to go undetected and untreated for a year. The medical malpractice case against LabCorp was dismissed on the basis of the statute of limitations. In the instant case, the circuit court concluded that plaintiff could not establish the causation element of his legal malpractice action because it had been determined in the medical malpractice case that the limitations period for the medical malpractice claim expired before plaintiff retained defendant. The circuit court determined that plaintiff was collaterally estopped from relitigating this issue in the legal malpractice action.

Collateral estoppel precludes relitigation of issues between the same parties. *VanVorous v Burmeister*, 262 Mich App 467, 479; 687 NW2d 132 (2004). As our Supreme Court recently observed in *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004):

Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full [and fair] opportunity to litigate the issue; and (3) there must be mutuality of estoppel. [Internal quotations and footnote deleted.]

The mutuality of estoppel element requires that “in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action.” *Id.* at 684. However, the Supreme Court in *Monat* recognized an exception to the mutuality of estoppel requirement when collateral estoppel is asserted defensively against a party who has already had a full and fair opportunity to litigate the issue. *Id.* at 685-686, 694-695.

Here, defendant raises the collateral estoppel doctrine defensively against plaintiff, who had a full and fair opportunity to litigate the statute of limitations issue in the prior medical malpractice action.¹ Consequently, the circuit court correctly determined that collateral estoppel bars plaintiff from relitigating this issue in the present legal malpractice action. Because plaintiff is bound by the prior determination that he discovered the medical malpractice action in December 1995, more than six months before he retained defendant in June 1997, he cannot establish that any act or omission by defendant jeopardized his medical malpractice action. Therefore, defendant’s motion for summary disposition was properly granted.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly

¹ While the Court of Appeals opinion, *Mielewski v Laboratory Corp of America*, unpublished opinion per curiam of the Court of Appeals, issued 2/12/2002 (Docket No. 225269), does not specify when the limitations period began to run, the circuit court made such a determination in connection with plaintiff’s motion for relief from judgment based on *Miller v Mercy Memorial Hospital*, 466 Mich 196; 644 NW2d 730 (2002). The circuit court ruled that the six-month discovery period began in December 1995, when plaintiff’s wife was diagnosed with aggressive cancer, and that the limitations period had expired before her death.